



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This is an application by the tenants for a monetary order for return of double the security deposit, and the filing fee for the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail. A Canada post track history was provided as evidence of service and the scanned delivery receipt indicated the landlord signed for the package on January 4, 2014. The landlord did not appear.

I find that the landlord has been duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

On January 15, 2014, the landlord acknowledged receiving the hearing package, by sending the Residential Tenancy Branch a letter. That letter requested that the telephone conference hearing scheduled for today's date be changed to a face to face hearing to accommodate a hearing disability.

Upon my review of the file, it appears that the letter was processed as evidence, rather than an application. That application should have been processed at the time it was received; either granting the landlord's request for a face to face hearing or confirming the telephone conference, either way the hearing scheduled would have taken place on the same date and time.

As the landlord did not appear, I had the Residential Tenancy Branch staff, canvass the waiting area of the Residential Tenancy Branch office, to see if the landlord had appeared for a face to face hearing and at 9:40 am it was determined the landlord had not appeared in person or by telephone conference. Therefore, I proceeded in the absence of the landlord as I had previously found the landlord was duly served.

Issues to be Decided

Is the tenant entitled to a monetary order for return of double the security deposit?

Background and Evidence

The tenants paid a security deposit of \$550.00 at the start of the tenancy, which commenced in June 2012. The tenants vacated the premises on November 30, 2013. The tenants provided the landlord with a written letter, containing their forwarding address by leaving a copy on the counter at the end of the tenancy, by sending a text message and again in person on December 6, 2013. Filed in evidence is a copy of the letter, which provides the tenants forwarding address.

The tenants stated they did not sign over a portion of the security deposit.

The tenants stated on December 23, 2013, they filed their application for the return of double the security and on December 24, 2013, they received a cheque in the amount of \$450.00. The tenants stated the landlord had deducted an amount they had not consented to. Filed in evidence is a copy of the cheque.

The tenants stated they deposited the cheque into their bank account and on January 16, 2014, they received a letter from their bank, indicated the cheque has been returned as dishonoured. Filed in evidence is a letter from their bank supporting the cheque returned as dishonoured.

The tenants stated that on January 16, 2014, they received a certified cheque in the full amount of their security deposit (\$550.00) and that was deposited in their account on January 22, 2014. Filed in evidence is a copy of the envelope, which shows the post mark of January 11, 2014.

The tenants stated although they have received the return of their security deposit, they seek to recover double that amount as the landlord did not return their security deposit within the required time frame under the Act. The tenants seek to recover the amount of \$550.00.

The tenants stated that they further seek to recover the service charge of \$5.00, as that was the cost they incurred for the landlord's cheque being returned as dishonoured. The tenants seek to recover the amount of \$5.00.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the landlord is in breach of the Act.

On this case the tenancy ended on November 30, 2013, and although the landlord sent a cheque to the tenants within 15 days, that cheque was returned as the cheque was dishonoured by the bank.

The landlord sent a subsequent cheque on January 11, 2014; however, that cheque was sent after the statutory required timeline. The landlord is in the business of renting and therefore, has a duty to abide by the laws pertaining to residential tenancies.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenants double the amount of the security deposit. The legislation does not provide any flexibility on this issue.

Conclusion

Having made the above findings, I must order, pursuant to section 38 and 67 of the Act, that the landlord pay the tenant the sum of \$1,155.00 comprised of double security deposit (\$550.00) on the original amounts held, \$5.00 bank service fee for the dishonoured cheque, and the \$50.00 fee for filing this Application. However, this amount is reduced by the \$550.00 which was received by the tenants on January 16, 2014.

Therefore, the tenants are given a formal order for the balance due of \$605.00. Should the landlord fail to comply with this order, the order may be filed in the small claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 14, 2014

Residential Tenancy Branch

